

MEMORANDUM

TO:

File #201083027 – Financial Resources Mortgage, Inc.

FROM:

J. Christopher Marshall

Richard W. Head

DATE:

April 30, 2010

RE:

Interview of Mary Jurta on March 17 and March 30, 2010

We interviewed Mary Jurta, the Director of the Consumer Credit Division, at the Banking Department on March 17, 2010 and again on March 30. Mr. Head explained the assignment of evaluating how state government interacted with Financial Resources Mortgage, Inc. ("FRM").

Securities Bureau

Mary Jurta was hired as a securities examiner in 1987 at a time when the regulation of securities was a division of the Department of Insurance. She was hired following the Blondheim case, a Ponzi scheme in which a New Hampshire resident sold unregistered securities primarily to New Hampshire investors. In 1991, the Legislature dissolved the Office of Securities Regulation and divided its functions between enforcement, which it placed with the Department of Justice, and licensing, which it placed with the Secretary of State. In 1992, the Legislature re-combined the two functions as the Bureau of Securities Regulation ("BSR" or "Bureau") under the Secretary of State, which is its current status. TomConnolly, who was an Assistant Secretary of State, became the *de facto* head of securities. He resigned in May of 1993 and in August of 1993, the Secretary of State appointed Peter Hildreth to be the Director of Securities. Mr. Hildreth remained Director of Securities until September 2001 when he became Bank Commissioner.

Licensing falls into four categories: broker/dealers of which there were 2000 or so licensed in New Hampshire; issuer/dealers of which there were 80 to 100; investment advisors; and, branch offices of broker dealers, of which there were 300 to 400. In addition, licensing includes agents of broker dealers, agents of investment advisors and agents of issuer/dealers. Broker/dealers, investment advisors and their agents file applications for licensees online.

In the early period, the Bureau was staffed by the Director, Ms. Jurta, two examiners and three clerical people. The three clerical positions included one that processed licensing for mutual funds, one that processed other licenses and one person that provided clerical and administrative support. Qualifications required of the examiners included a college degree and some accounting experience.

The examination of broker/dealers focused on sales practices such as whether broker/dealers were trading "ahead of their clients," whether they paid investment advisors to direct trades to them, and whether they placed orders promptly after receipt.

A normal exam took one to three days. A large branch office of a big brokerage house such as Merrill Lynch might take a week to ten days. The licensees paid for the exams on a flat rate per day of approximately \$200.

The North American Securities Administrators Association ("NASAA") provided modules for exams as well as training information for examiners. Large broker/dealers with home offices out of state were examined by the SEC or the NASDQ. Those organizations monitored for items such as net capital requirements and insider trading compliance.

The person who reviewed security filings was called the Director of Security Filings and the person who reviewed license applications was called the Director of Licensing. The Director of Licensing had clerical help as well as the services of "CRD," which was a national repository for information on prospective licensees.

Christopher Lent started as an intern/volunteer while he was a law student. Upon graduation, he was hired as a paralegal. Eventually, he became the Staff Attorney when that position was created. Duties of the Staff Attorney included enforcement as well as review of certain securities filings. Kevin Moquin was hired in July or August of 2000. Jeff Spill was hired in the fall of 2000 to replace Chris Lent.

Ms. Jurta started her education at UNH, which she attended for two years in the late 60's. Before joining the Securities Bureau, she worked for three years as a Title I tutor and from January 1986 to July 1987 at Chubb Securities as a mutual fund accountant doing daily valuations. She received a BS degree in accounting from Franklin Pierce in 1987 or 1988 and earned her CPA certification in 1989. She completed an MBA from Southern New Hampshire College in 1992 or 1993.

Ms. Jurta worked as a Junior Examiner from 1987 until approximately 1989 when she was named Director of Security Filings. She remained the Director of Security Filings until 1991 when the department was dissolved and she was rehired as a Financial Research Analyst. Her job functions as a Financial Research Analyst were the same as those of Director of Securities Filings. In early 1995 she was named Director of Licensing.

As Director of Licensing, she reviewed all license applications for broker/dealers and investment advisors and all renewals. She was assisted by one other individual. In addition, she managed the day-to-day operations of the department. She and her assistant reviewed all new applications for broker/dealers and investment advisors, of which there were approximately 10 per week.

RSA 421-B:25 states that in an action for rescission, the purchaser of the security shall be entitled to the consideration paid together with interest at the legal rate, costs and reasonable attorney's fees less the amount of any income received on the securities. An issuer offering rescission can attend to it himself subject to oversight by the BSR. If the issuer offers rescission, the Bureau will not punish him further. Restitution must be "done in current funds." An issuer

cannot "do restitution on future income." That would be "another bet." The statutory remedies and civil liabilities are uniform.

Ms. Jurta never acted as a hearing officer nor did she oversee the examiners. She generally did not oversee the examiners.

Christopher Lent, as head of enforcement, operated on his own. The examiners were seldom, if ever, available to help on enforcement matters. She does not recall ever discussing FRM issues with Christopher Lent or with Attorney Latici's clients, the Gabrielsons.

Her first contact with FRM was to accompany Jeff Spill on a site visit in April of 2001. She acted in a support role to Mr. Spill. He had demanded certain documents that had not been produced. She recalls that they went to the home office of Mr. Coyne who stated that other documents they had requested would have to be obtained from Mr. Farah. She thought there was evidence that securities were being issued in the form of promissory notes and that unlicensed activity was taking place. Her recollection was that Mr. Coyne was dealing with securities and that there was co-mingling of funds.

She also recalled that, prior to visiting Mr. Coyne, she had an exchange with Dennis Maloney who was representing FRM. FRM claimed that it was a bank and could not turn over records because they were confidential. She called the Banking Department to inquire if FRM was a bank and was told that it was not. She also wrote a letter to Dennis Maloney on the issue of whether FRM was acting as a bank and subject to regulation.

Ms. Jurta reviewed notes that she made on the visit to Mr. Coyne's home. A reference in the notes to Chuck Hildreth is Peter Hildreth's brother. Mr. Hildreth has two brothers, both of whom were issued notes by FRM, one for \$20,000 and one for \$30,000. The documentation for the notes was being held by Jon Hildreth's attorney.

When she returned to the office, she told Mr. Hildreth that his brothers were involved as investors in FRM. She does not recall the specifics of the conversation. Under the circumstances, Mr. Hildreth would never serve as a hearing officer on a case in which his brother was involved. Nothing in writing stated that Mr. Hildreth had a conflict and was recusing himself from FRM matters. Until the issue presented itself, Mr. Hildreth did not need to put anything in writing. He generally did not participate in investigations in any event. There was no formal recusal policy.

The cease and desist order against FRM issued in November 2001 right after Mr. Hildreth left the securities department. After Mr. Hildreth departed, Mark Connolly was placed in charge. He hired two people from Chubb Insurance where he had worked, Laurie (?) and Barry Glennon.

Ms. Jurta left the Bureau of Securities Regulation for the Banking Department in November 2001, approximately a year after Mr. Hildreth left the BSR. She was hired as an Administrator IV as Director of Consumer Credit. This was a newly created position. She was in charge of all licensing, examiners and the legal coordinator for Consumer Credit, which was a new position.

Consumer Credit regulates the following activities:

Sales finance companies/retail sellers (auto dealers etc) – Chapter 361-A;

- First Mortgage Bankers and Brokers Chapter 397-A (Includes mortgage originators. Originated with Chapter 398-A regulating second mortgage, which merged into chapter 397-A in 2005);
- Small Loan Lenders Chapter 399-A (includes payday lenders and lenders of small loans under \$10,000 with over 10% interest)
- Debt Adjusters Chapter 399-D;
- Non-Bank Cash Dispensing Machines Chapter 399-F;
- Money Transmitters Chapter 399-G
- Mortgage Loan Servicing Companies Chapter 397-B;

Retail Sellers, Retail Mortgage Servicers (before July 31, 2009) and Cash Dispensers are not examined. All others are subject to examination.

Over the years, the laws governing consumer credit have increased in complexity as have the enforcement tools. In 2001, the Banking Department had no power to impose fines or penalties on a licensee. It could deny a license or revoke a license, but it had little alternative to demand a revocation. Many of the licensees are small New Hampshire based businesses and a license revocation meant "taking away someone's livelihood."

Consumer Credit started with the regulation of small loan activity. The regulation of second mortgages started in 1967. Chapter 397-A on first mortgage bankers and brokers took effect in 1987. In part because the regulation of consumer credit arose as a division of the Banking Department, confidentiality restrictions on releasing information are strict. In 2005, a statute was passed that allowed some information sharing among agencies.

At the time Ms. Jurta started with Banking, the Consumer Credit Division had a legal coordinator as did the Banking Division. Donna Soucy was the general counsel and she oversaw the two legal coordinators. Todd Wells was the Chief Examiner for Banking while Kim Griffin became the Chief Examiner for Consumer Credit. The Department performed approximately 500 examinations per year.

In addition to supervising Mr. Griffin, Ms. Jurta supervises all licensing. She spends approximately 60% of her time on licensing and 40% on examinations. In addition, she deals extensively with other state regulators, federal regulators, and the legislature.

When she started in 2002, there were four examiners and no system for assigning exams on a regular basis. A complaint might trigger an exam. Beyond that, scheduling was haphazard.

Licensing was also disorganized when she started. Examiners performed the licensing review because there were no licensing personnel. Applications for license renewals were often deficient. Incomplete licenses were held over until completed. Licenses that were incomplete were physically placed in the back of a box where they were stored until the licensee complied or the license was not renewed. Holdover status created ambiguity as to the status of the licensee if the license never renewed. Ms. Jurta was hired in part because she had experience in both licensing and examinations.

Several other people were hired from the Securities Bureau. Celeste Couture started in the fall of 2003 and Rebecca Stone started in the fall of 2004. These were both strong licensing people who moved to Banking for better opportunity and higher pay. Ms. Jurta believes the movement of personnel from Securities to Banking caused some friction with Securities. A subsequent issue involving jurisdiction on certain consumer protection matters also created friction between the Director of Banking and the BSR. Until that occurred, around 2005, the two individuals maintained cordial relations.

As new Bank Commissioner, Mr. Hildreth requested an audit of the Department by the LBA. As a result of the audit, one of the changes implemented by Mr. Hildreth was to require on-site examinations on all licensees every 18 months as required by statute. Prior to the change in policy, the Department's position was that the annual review of a license constituted an examination that fulfilled the statutory requirement. It took approximately a year and a half to implement the statutory schedule from the date the new policy started in January 2003. Before that, there was no system for assigning exams on a regular basis. Scheduling was haphazard. Also, when she started in 2002, there were only four examiners.

Enforcement actions could be triggered in different ways: referrals from examiners; referrals from investigations triggered by complaints from consumers; and referrals from licensing to collect penalties for licensing deficiencies. A referral from an examination started with a memo from Kim Griffin, the supervisor of examinations. Factors that influenced whether Mr. Griffin recommended enforcement included whether violations were "repeats," had potential for consumer harm, or were significant, such as interference with an examination or a refusal to cooperate. A referral included the summary of violations and might also include, in the discretion of the examiner making the referral, exhibits to support the violations. Mr. Jurta consulted with Mr. Griffin on whether to refer an examination for enforcement, but usually deferred to his judgment. All referrals for enforcement originating from examiners or licensing were reviewed by Ms. Jurta.

Enforcement actions for licensing violations and failure to pay fees or penalties were treated in a perfunctory way. The licensee usually just paid the penalties or compromised on a lesser amount or forfeited his license.

The Legal Department suffered from a lack of resources. Andrea Shaw used to handle all of the enforcement work by herself without a paralegal or a secretary. Resources gradually improved

with additional support for the attorney. Ms. Jurta reviewed approximately 10-15 recommendations for enforcement actions per month.

By an email dated April 23, 2003 from Banking to Securities, Mr. Jurta inquired if Securities wanted to join in an examination that was to be conducted in May 2003. She was aware that Securities had an enforcement action pending. She also thought that Banking had no jurisdiction to review the securities aspects of FRM's business. She was aware that "he had been doing this for quite awhile."

A month later, Securities, through Jeff Spill, asked about releasing results of the Banking examination. Banking concluded preliminarily that it could not make its results public although the last email indicated that Donna Soucy, who needed to review the issue, was not immediately available. One issue for the Banking Department was whether making public a report examination would have the effect of subjecting it to the Right-to-Know law. Ms. Jurta cited the foregoing exchange as one of "several times" that Banking tried to get Securities interested in the case.

The exam performed by Banking on May 19, 2003 did not prompt a request for enforcement action.

The October 11, 2004 examination did prompt a referral for enforcement action. Some of the fourteen observations were more serious than others.

- Number 1, involving failure of advertisements to state "licensed by the New Hampshire Banking Department" was not serious.
- Number 2, failure to report significant events (the Gabrielsons' lawsuit and the BSR enforcement action) could be the basis for enforcement action. (Mr. Farah stated that the civil lawsuit somehow prevented the licensee from providing the Banking Department with financial statements for fiscal year 2003.)
- Number 3, failure to conduct business only under a trade name as stated on the license, was not serious, although a recurring issue for this licensee.
- Number 4, a false statement to the Commissioner by way of a letter dated August 19, 2003 stating that FRM was in the process of applying for a dba to comply with a prior finding, was false in that the Secretary of State's Office had not received any application. This was serious because it was a misrepresentation to the Department.
- Number 5, failure to file complete financial statements, is significant. Apparently they were eventually provided.
- Number 6, involving extension of tax returns, was not a serious matter.

- Number 8, failure to preserve records by disposing of them in the dumpster, was serious.
- Number 10, failure to comply with a HUD requirement for the disclosure of loan origination fees on the wrong line of the HUD 1, was not serious.
- Number 11, on fees, was quite technical.

FRM was sloppy. Other licensees were also sloppy. An estimated one-third of the licensees do not prepare financial statements and some mortgage brokers could not prepare financial statements. FRM, however, was not even keeping a decent checkbook. It also appeared that FRM did not take the regulators seriously. Mr. Farah was also able to "play the bureaucratic game." He delayed and used others, including lawyers, to help him delay. It was encouraging to the Department when FRM later on hired someone to help with compliance. Overall, there was no consumer harm that the examiners discovered. Unethical consumer practices and consumer harm — Banking would step on those harder than books and record keeping violations. An email message from Kim Griffin to Mary Jurta dated November 15, 2005 referred to the exam conducted October 11, 2004 and an investigation concerning consumer complaints and the safeguarding of consumer information, i.e. disposal in the dumpster. The licensee, at that point, had not paid invoices for the examination and the question was whether to do a referral for enforcement or wait until the licensee had exhausted the time limits for payments.

Robert Fleury also sent an email on November 22, 2004 describing a federal trade commission action for failure to protect sensitive consumer information. The email regarding the FTC action was to provide a concrete issue on which to bring enforcement action as opposed to the general issue of sloppiness in record keeping. The consumer records issue involved consumer harm which raised it to a license revocation issue.

A memo from Kimothy Griffin to Mary Jurta dated November 16, 2005, on account of the examination conducted on October 11, 2004, made the referral for enforcement and recommended that a show cause hearing be scheduled. Ms. Jurta did not know why the release of the exam and the referral had been delayed. Andrea Shaw may have asked Mr. Griffin to delay releasing the exam. Ms. Jurta could not remember the reason for the delay.

Ms. Jurta felt that FRM was sloppy, but sloppiness is a difficult to basis to close down a business. FRM finally made a big mistake by throwing out confidential records. That was not a grey area, and there was no defense. FRM should have been shut down, which would have taken them out of the residential market.

The Statement of Allegations dated December 16, 2005 commenced an enforcement action. Both Mary Jurta and Donna Soucy would have reviewed the statement. The Notice of Order dated December 20, 2005 was signed by Robert Fleury, the Deputy Bank Commissioner. While the Commissioner normally signs such orders, he may have been away or he may have refused due to recusal. The Department does not have a written policy on recusals, although examiners will occasionally recuse themselves.

The Notice of Order starts a proceeding. After that Ms. Jurta does not have a role in it. In this case, Todd Wells was appointed hearing officer. As Chief Examiner for Banking, he regularly acted as a hearing officer for consumer credit enforcement proceedings.

The Statement of Allegations included an Order to Show Cause as to why the license should not be revoked. An OTC is not as onerous as a Cease and Desist Order. It is an easier standard for the staff to meet and it shifts the burden to the licensee.

Emails dated January 20, 2006 indicate that Andrea Shaw wanted to hold up the license for a branch office because of the pending enforcement action. She did not want the Department to issue a license when it was in the process of revoking one.

An email from Kim Griffin to Mary Jurta dated February 23, 2006 inquired whether an exam should be scheduled to which she responded that he should discuss it with Andrea Shaw who was in the process of "settling the privacy matter." Andrea Shaw responded that she wanted to hold off scheduling the exam until she had a solid Consent Agreement in place, then, if he (FRM) repeats a violation of Gramm Leach Bliley "we can get him for violating an order of the Commissioner as well."

During 2006, the Legal Department was very busy and active. Likewise, the request for a continuance as evidenced by a letter dated March 6, 2006, further delayed the proceedings. An email dated March 9, 2006 from Todd Wells to Michael Burke, attorney for FRM, confirms the continuance and sets a deadline of 30 days for the settlement or the hearing will be rescheduled.

On April 25, 2006, an email from Andrea Shaw to Michael Burke, the attorney representing FRM, confirms that a draft consent order had been sent to Banking's general counsel for review.

An article in the Concord Monitor regarding litigation against FRM prompted emails and inquiries. On April 25, 2006, Andrea Shaw asked Celeste Couture by email to request, as the licensor, that FRM provide a complete list of all litigation the licensee was involved in over the previous six years and information on the lawsuit involving National Inspection and Repair, which was the subject of the lawsuit reported in the Concord Monitor article.

An email dated April 25, 2006 from Andrea Shaw to Donna Soucy states that she would like to "fast track" resolution of the case in light of "today's newspapers article" and that they are planning an unannounced exam in the near future. The newspaper article was "not good" for the Legal Department because an old action was pending, so now there was more a sense of urgency.

Ms. Jurta discussed the FRM matter with Mr. Hildreth. An email from Mary Jurta to Kim Griffin dated April 27, 2006 refers to Mr. Hildreth having authorized Mary Jurta to contact Securities to see if Securities wanted to accompany Banking on a routine exam. She did not know if she told Securities that the exam was to be announced or unannounced. Ms. Jurta was not happy that someone at the BSR called Gallagher's office and told him that Banking was

doing an exam. Her original voice mail had been to Barry Glennon, whom she assumed forwarded it to Jeff Spill because Mr. Spill had called her back and left a message that he had called Dennis Maloney. Ms. Jurta produced a copy of a telephone log confirming the message from Mr. Spill.

A memorandum from the staff attorney, Andrea Shaw, to Peter Hildreth summarized the complaints filed against FRM. Nine in eleven years is "not light" but "moderate to high." Usually, Banking does not get that many complaints, but a lot of these complaints were out of its jurisdiction.

The memos on the status of complaints and the status of the enforcement action were to apprise Mr. Hildreth so he could respond to questions raised as a result of the newspaper article.

An email dated May 24, 2006 from Mary Jurta to Andrea Shaw states that she recommended against any further settlement negotiations. Ms. Jurta did not recall what triggered her email. Ms. Shaw responded that Donna Soucy had previously decided to stop negotiations and that there should be a basis for a "straight forward revocation" for failure to implement a GLB program.

Shortly after this, Andrea Shaw moved from Consumer Credit to Banking. She took none of her pending matters with her. (But see below.) Ms. Jurta was disappointed with the move, but did not have authority to object to it. Ms. Shaw's replacement was a Jim Sheppard. He had previously been a hearing examiner at the Department of Safety. Andrea Shaw had worked hard. Her transfer to Banking was a lateral move made at her request. FRM was just one of the many enforcement actions pending in 2006 and 2007. It was hard for Mr. Shepard to get into cases that were pending on a cold record. He generally did a good job and accomplished a lot in his period of time with the Department.

An email exchange in August of 2006 between Mary Jurta and Andrea Shaw indicated that the enforcement action was at a standstill.

A Referral for Administrative Action from Celeste Couture for failure to meet "surrender requirements" dated September 6, 2006 describes the company's failure to publish a notice of surrender of its license as required, to file the annual report or provide a listing of loans. The failure to meet surrender requirements may have been referred directly from licensing to legal. Ms. Jurta did not recall anything about it.

The May 18, 2006 examination prompted an interoffice referral dated October 4, 2006 with the recommendation of a show cause hearing for issues raised by the examination. Ms. Jurta does not recall discussing the FRM enforcement action with Mr. Shepard, who replaced Andrea Shaw.

Ms. Jurta read recently that the BSR had entered into a Consent Decree with FRM that involved the payout of \$1 million. If she had known about that at the time they were doing an

examination, Banking would have looked for the money coming in and going out. They did not know about it so they did not look for it.

The June 11, 2007 exam raised issues, some of which were significant.

- Item 1, failure to notify of closing of a branch office, was not significant.
- Item 4, failure to report error in capital stock, is important because the Department does a background check on any stockholder with a direct ownership of more than 25% of the licensee. It obtains a criminal background check and may require personal disclosure information.
- Item 6, failure to identify Denied Loan Applications from Withdrawn Loan Applications is important in order to determine if requirements for denying and communicating reasons for denial of the loan are met. It was surprising that this was not stated as a repeat violation since it had been cited previously.
- Item 7 A & B, failure to produce financial statements and tax returns, are not technically required but may be required if they are requested. It is helpful to compare what is reported to the tax authorities to what is reported on financial statements.
- Item 7 C, missing and incomplete work papers and copies of source documents to the New Hampshire Annual Report, is "foundational" and something that the Department needs.
- Absence of bank reconciliations for January, February and March of 2007 is minor and less important.
- Item 8, policy standards for safeguarding consumer information, goes to the prior findings in prior years and is part of the same pattern. By itself, these are not significant, but combined with the prior violations, these are more significant.

Ms. Jurta did not know why there was no referral from the 2007 examination. She was unable to explain a lack of referral.

Ms. Jurta did not know how the pending enforcement action was resolved. She speculated that it may not have been closed at all and that it may still be open.

Generally, a company as sloppy as FRM in its record keeping should not be licensed. However, there was no fraud with respect to the consumer issues that the Banking Department was regulating. If this company had been shut down, it would have been shut down based on books and records. Even if its license had not been revoked, the books and records violations could have generated penalties and fines. A company that can afford to pay the Gallagher office can

afford to pay for compliance. But it was successful in stalling the process. All Banking could do was shut down residential lending. It would not have fixed the Ponzi scheme or the fraud on investors because that occurred in the solicitation and mailing of commercial loans, which were not regulated by the Banking Department.

If CL&M had been investigated, violations may have been found, but they would have been of securities laws and not of banking laws. FRM looked like a commercial enterprise that was engaging primarily in commercial loan brokering activities.

When Banking heard that FRM had closed, it sent several people to its offices, including Mr. Hildreth, to review the records. Mr. Hildreth found packets of materials for soliciting investors and sent those packets to Mark Connolly. The Banking examiners said the records were of securities transactions. Ms. Jurta also looked at the FRM website and, to her, the investment solicitations looked like securities. The sale of fractional interests in trusts, even if exempt from securities law, were subject to State anti-fraud provisions and were subject to the federal securities law. The residential loans regulated and reviewed by the Banking Department were not fraudulent.

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